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No. 87-130

In The

Supreme Court of the United States

October Term, 1987

GLENN BELL, DALE W. STUPER, DAVID J. STUPER, MARTIN J. COOLEY, DALE BROWN, Drivers; FRANCES McALLISTER, BARBARA F. McALLISTER, ALAN F. GILDEMEYER, RICHARD AXE, Packers; and PAT EUSON, Helper,

Petitioners,

vs.

TEAMSTERS LOCAL UNION NO. 317, Syracuse, New York, affiliated with the International Brotherhood of Teamsters, Chaffeurs, Warehousemen and Helpers of America,

and

NAUM MOVING AND STORAGE COMPANY, INC.,

Respondents.

BRIEF OF RESPONDENT TEAMSTERS LOCAL UNION NO. 317 IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

BLITMAN AND KING
Attorneys for Respondent Teamsters Local Union No. 317
Office and Post Office Address
The 500 Building, Suite 1100
500 South Salina Street
Syracuse, New York 13202
Telephone: (315) 422-7111

Of Counsel:

JULES L. SMITH, ESQ.
(Counsel of Record)
DONALD D. OLIVER, ESQ.

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTIONS PRESENTED

1. Have petitioners set forth sufficient evidence of the existence of a meritorious claim against Teamsters Local Union No. 317 to support vacating the dismissal?
2. Did the District Court properly exercise its inherent power to manage its affairs within the permissive range of its discretion when it dismissed the action for petitioners' failure to prosecute with due diligence?

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BRIEF OF RESPONDENT TEAMSTERS LOCAL UNION NO. 317 IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

Petitioners seek review of a decision by the United States Court of Appeals for the Second Circuit which affirmed the District Court's dismissal of plaintiffs' lawsuit for failure to prosecute. Respondent Teamsters Local Union No. 317 opposes the issuance of a writ of certiorari to review the decision of the District Court and Court of Appeals because the decisions below were clearly correct and there is no conflict among the circuits on an issue herein requiring resolution by this Court.

OPINIONS BELOW

References to the opinions and judgments delivered in the courts below are set forth in the petition at page 1.

JURISDICTION

The alleged jurisdictional requisites are set forth in the petition at page 1.

STATUTORY PROVISIONS AND RULES INVOLVED

Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 411(a)(4), is reprinted at RA-1 of the appendix to this brief. Rules 3 and 11 of the General Rules of the United States District Court for the Northern District of New York are reprinted at RA-1 and RA-2 of the appendix to this brief.

STATEMENT OF THE CASE

Background of Case

This action, purportedly styled as a hybrid Section 301/duty of fair representation suit, was filed on March 29, 1985. The complaint alleged that Naum Moving and Storage Company, Inc. ["Naum"] violated a collective bargaining agreement and that Teamsters Local Union No. 317 ["Local 317" or the "Union"] breached its duty

of fair representation in connection with negotiations for a new labor contract.

After the filing of answers by defendants Naum and Local 317, plaintiffs served separate requests for production of documents upon defendants in April, 1985. Defendants Naum and Teamsters Local 317 filed their responses to said discovery requests in May, 1985.

On June 13, 1985, Local 317 served its First Set of Interrogatories and Requests to Produce ["Interrogatories/Requests"] upon each of the individually-named plaintiffs. When no responses were received, Local 317 moved for and obtained an order compelling answers to the Interrogatories/Requests.[1]

Thereafter, on or about September 3, 1985, Local 317 received partial responses to the Interrogatories/Requests from eight of the ten individual plaintiffs. By letter dated March 17, 1986, Local 317's attorneys advised plaintiffs of their position that this case contained no legally cog-

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[1] When no responses to the Interrogatories/Request were received and no request for an extension of time was made within the time provided under the Federal Rules, Local 317, on July 19, 1985, forwarded a motion to compel responses to the district court. After the motion had been forwarded, plaintiffs' attorney, Scott D. Rodman, Esq., contacted Local 317's attorneys and requested an extension of time to respond to the Interrogatories/Requests to August 7, 1985. On July 29, 1985, Attorney Rodman forwarded a Stipulation to Extend Time, which was immediately executed by Local 317's attorneys. Thereafter, on August 2, 1985, Local 317's attorneys received a signed order from the district court compelling answers to the Interrogatories/Request. Since an extension of time had already been granted, Local 317 took no action to serve the order. When no responses were received by August 7, 1985, however, a copy of the order compelling responses within 20 days was forwarded to Attorney Rodman. The order was filed with the district court on August 13, 1985.

nizable claims against Local 317 and, therefore, that plaintiffs were obligated to voluntarily dismiss the action pursuant to Rule 11 of the Federal Rules of Civil Procedure. The letter also pointed out that plaintiffs had failed to fully answer Local 317's Interrogatories/Requests in accordance with the district court's order compelling answers. No response was received to the letter of March 17, 1986.

By notice dated September 8, 1986, all parties were instructed to appear before the district court at a dismissal calendar call on September 26, 1986 and show cause why the action should or should not be dismissed. On September 26, 1986, attorneys for defendants Naum and Local 317 appeared at the dismissal calendar call and presented argument in support of dismissal for lack of prosecution. Plaintiffs' attorneys failed to appear at the dismissal calendar call.

After hearing argument from defendants' attorneys, the district court dismissed the action for lack of prosecution. An Order of Dismissal was subsequently entered on October 3, 1986.

The Decision of the District Court

By order to show cause, dated October 23, 1986, plaintiffs brought a motion pursuant to Federal Rule 60(b) for relief from the Order of Dismissal. Following service of affidavits and memoranda by defendants Naum and Local 317 in opposition to the motion, oral argument was held before the district court on November 7, 1986. On January 7, 1987, the district court issued a Memorandum-Decision and Order denying plaintiffs' motion for relief from the October 3, 1986 Order of Dismissal.

The Decision of the Court of Appeals

On January 12, 1987, plaintiffs reinstated the appeal in this case before the Second Circuit.[2] Oral argument was presented to the Court of Appeals on April 1, 1987 and, by Order dated April 2, 1987, the Court of Appeals affirmed the judgment of the District Court for the reasons set forth in Chief Judge Munson's Memorandum-Decision and Order of January 7, 1987.

On July 1, 1987, plaintiffs applied for a writ of certiorari to this Court seeking review of the Court of Appeals' judgment.

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REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

This Court's discretionary review of decisions of the United States Courts of Appeals by writ of certiorari is generally limited to cases: where there is a conflict among the circuits on the same matter; where an important issue of federal law is presented which has not been, but should be, settled by this Court; or where a federal question has been decided in a way that conflicts with applicable decisions of this Court.[3] As more fully discussed herein-

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[2] Plaintiffs initially filed a Notice of Appeal on October 28, 1986. Plaintiffs then filed a Rule 60(b) motion with the district court for reconsideration of the dismissal for lack of prosecution. Following a pre-argument conference with Staff Counsel for the Court of Appeals on December 2, 1986, the parties executed a Stipulation for withdrawal of the appeal without prejudice and subject to reinstatement after the district court's decision of plaintiffs' then pending motion for reconsideration.

[3] See Rule 19(b)(1) of the Supreme Court Rules.

after, the above reasons for granting certiorari are totally absent in the instant case. It is submitted, therefore, that there is no legal issue warranting certiorari.

First, there is no conflict among the circuits on an issue herein. It is uniformly recognized that the district courts possess authority to dismiss actions for lack of prosecution in appropriate circumstances. The district court's initial dismissal and denial of the motion for relief under Rule 60(b) were based upon the particular facts and circumstances of this case and did not purport to set forth any general rule of law.

Second, there is no important question of federal law which has not been, but should be settled by this Court. The Second Circuit affirmed the district court's decision based upon its finding that the record in this case did not warrant relief from dismissal. Rule 60(b) specifically provides for an analysis of the facts on a case-by-case basis in determining whether a party is entitled to relief from judgment. The decision of the lower courts herein fully accorded with the provisions of Rule 60(b).

Finally, the decisions of the courts below are in full accord with previous decisions of this Court. The district court's dismissal of plaintiffs' action, based upon review of the entire record, was a proper exercise of its inherent discretion as articulated by this Court in *Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962).

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ARGUMENT

POINT I

THE COURT OF APPEALS ACTED PROPERLY IN AFFIRMING THE ORDER OF DISMISSAL BECAUSE PLAINTIFFS FAILED TO DEMONSTRATE A MERITORIOUS CLAIM

A prerequisite for relief from judgment under Rule 60(b)(1) of the Federal Rules is the movant's demonstration of a meritorious claim.[4] In the present case, since plaintiffs have wholly failed to establish a meritorious claim, the district court properly denied plaintiffs' motion to vacate the dismissal. Accordingly, the Court of Appeals properly affirmed the district court's judgment.

A. The Complaint Fails To State A Claim For Breach Of The Duty Of Fair Representation.

The statutory duty of fair representation is breached only when a union's conduct toward a member is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes,* 386 U.S. 171, 190 (1967). Moreover, a union is allowed a wide range of reasonableness, *Ford Motor Co. v. Huffman,* 345 U.S. 330, 338 (1953), so long as it acts honestly and in good faith on wholly relevant considerations and not upon capricious or arbitrary factors. *Humphrey v. Moore,* 375 U.S. 335, 350 (1964). A breach of the duty of fair representation may not, therefore, be established merely upon allegations that a union has performed poorly in its capacity

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[4] *Marshall v. Monroe & Sons, Inc.,* 615 F.2d 1156 (6th Cir. 1980); *Ben Sager Chemicals Intern, Inc. v. E. Targosz & Co.,* 560 F.2d 805 (7th Cir. 1977); *Universal Film Exchanges, Inc. v. Lust,* 479 F.2d 573 (4th Cir. 1973).

as collective bargaining agent. In the instant case, since plaintiffs' claims are predicated exclusively upon their dissatisfaction with the results of negotiations between Naum and Local 317, no legally cognizable claim is presented.

The federal courts have repeatedly rejected claims against unions alleging breach of the duty of fair representation based upon dissatisfaction with the results of collective bargaining. In *Maurer v. U.A.W.*, 105 LRRM 2883 (M.D. Pa. 1980), for example, the court held that an international union and its local did not breach their duty of fair representation when they agreed to abrogate an arbitrator's award that authorized preferential hiring and retroactive seniority for employees who had been discharged for engaging in a wildcat strike.

In *Maurer*, the plaintiffs were discharged strikers who argued that the defendant unions acted arbitrarily by acquiescing to the employer's demand during negotiations that plaintiffs' re-employment opportunities under the arbitration award be vitiated, thereby sacrificing plaintiffs' employment interests to advance the seniority and job security of incumbent employees. In granting summary judgment to the unions and the employer, the court emphasized that the employer's adamant insistence upon abrogation of the arbitration award as an absolute precondition of agreement was of paramount consideration in evaluating the unions' actions. The court held that:

> The record does not support the charge of arbitrary conduct but, contrariwise, demonstrates a realistic, reasonable exercise of discretion based upon a good-faith consideration of wholly relevant factors. Of paramount relevance is the undisputed fact that [the em-

> ployer] made the arbitration award its most imporant concession demand and emphasized repeatedly that it would take a strike rather than allow the award to continue to have force and effect. A recognition by the unions of the futility of a strike call . . . . can hardly be termed arbitrary. . . . After numerous negotiating sessions, during which it became obvious that [the employer] would not retreat from its announced position, the proposal was accepted on the day the contract was due to expire. . . . In sum, aside from some conclusory allegations, I find absolutely no indication of arbitrary, or bad-faith conduct on the part of the defendant unions.

105 LRRM at 2886.[5]

Similarly, in *Aikens v. Abel*, 373 F. Supp. 425 (W.D. Pa. 1974), the court dismissed a complaint alleging that the Steelworkers Union had breached its duty of fair representation by failing to submit a collective bargaining agreement to the entire membership for ratification. In *Aikens*, due to the disastrous effects of a boom-bust cycle emanating from the nationwide steel strike of 1959, representatives of employers in the steel industry and the United Steelworkers Union agreed upon a national labor agreement which substituted binding arbitration for the right to strike in the event of an impasse in negotiations. The agreement was ratified at a nationwide meeting of

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[5] The court in *Maurer* also found that the union did not breach the duty of fair representation by failure to give plaintiffs notice of (a) the pendency of negotiations; (b) the employer's proposal to abrogate the arbitrator's award; and (c) the time and date of the ratification of the meeting at which the contract was adopted. The court reasoned that, although it would have been preferable to notify plaintiffs of the employer's position and the scheduled ratification meeting, the union really had no option but to accept the employer's proposal.

local union representatives. Although local union presidents who were to attend the meeting were sent a letter which informed them when and where the meeting would be held, it said nothing as to the proposed subject matter. Prior to the ratification vote on the national agreement at the meeting, a motion from the floor that the vote be postponed until the local union officers could consult with their membership was defeated.

The plaintiffs in *Aikens,* dissident members of the Steelworkers Union, subsequently commenced a federal court action, alleging that the international union had violated its duty of fair representation by failing to inform delegates that the purpose of the meeting was ratification of the national agreement, and by failure to submit the collective bargaining agreement to the general membership for ratification. The court, in dismissing plaintiffs' claims, held that:

> Given the "wide range of reasonableness . . . allowed a statutory bargaining representative" in the negotiation of the labor agreements, [citation omitted], this Court expressly finds that such conduct was not arbitrary and was not violative of the union's duty of fair representation.

Id. at 432-33.

Under similar circumstances, the federal courts have also found no breach of a union's fiduciary duties under Section 501 of the Labor Management Reporting and Disclosure Act in failing to negotiate a "satisfactory" contract. Thus, in *Carr v. Learner,* 547 F.2d 135 (1st Cir. 1976), a union member alleged that union officers had violated Section 501 by failing to obtain a better retirement plan for him than the one currently existing. In

rejecting the existence of any cognizable claim based solely upon the member's dissatisfaction with the results of the collective bargaining process, the court held that:

> [A]ssuming, however, that § 501 reaches conduct during the collective bargaining process, we do not think that the fiduciary duty imposed by it is violated in a case where nothing more is alleged than poor performance as a collective bargaining agent. *See Aikens v. Abel,* 373 F. Supp. 425, 433, 85 LRRM 2786 (W.D. Pa. 1974). While § 501 surely imposes obligations in addition to "the punctilio of an honor the most sensitive", *Meinhard v. Salmon,* 249 N.Y. 458, 464 (1928) (*Cardozo, C.J.*), on those to whom it is addressed, we do not believe that it permits a cause of action to be stated whenever a union member is dissatisfied with the results of the collective bargaining process. Although a fiduciary relationship implies certain affirmative, as well as negative obligations [citations omitted], it does not require that collective bargaining agents necessarily obtain what hindsight reveals to be *optimal* results. [citation omitted]. *The collective bargaining process is, by definition, too complex and too adversarial in nature to subject the participants in it to liability for every failure fully to satisfy their constituency.*

Id. at 138, [emphasis supplied].

Finally, in *Acri v. Machinists Lodge 115,* 781 F.2d 1393 (9th Cir.), *cert. denied,* — U.S. —, 107 S. Ct. 73 (1986), the Ninth Circuit affirmed summary judgment in an action by laid-off union members alleging that the union breached its duty of fair representation when it made alleged misrespresentations during the contract ratification process. The court of appeals found dismissal warranted because the members could not establish a causal relationship between the union's alleged misrepresentations and their

injury. In an opinion concurring with the granting of summary judgment to the union, Judge Reinhardt concluded that:

> In my view, the union's own election and removal process provides the proper vehicle for addressing complaints like the plaintiffs'. Negotiating labor contracts is difficult enough in these times without the additional threat of lawsuits from unhappy union members, with the attendant possibility of personal liability. Today's labor contracts no longer are automatic vehicles for gains by individual workers. Now, contracts containing cutbacks or reductions in benefits are far from infrequent. Dissatisfaction over the contents of a labor agreement is too easily transformed into a suit over the union official's performance.

Id. at 1399-1400.

In the instant case, plaintiffs' purported claims are based solely upon their dissatisfaction with the results of negotiations for the terms of a new collective bargaining agreement between Naum and Local 317. In that regard, two primary issues emerged during the course of negotiations. First, from the outset of negotiations in April, 1984, Naum insisted upon the inclusion of an "incentive plan" previously implemented in several other areas within New York State, whereby a given time period was designated for the completion of various work assignments. Second, as negotiations progressed, Naum proposed limiting the retroactive effect of the agreed-upon wage increase to two months.

In September and again in October, 1984, plaintiffs and other Naum employees rejected the proposed labor contract and insisted upon elimination of the "incentive plan" proposed, together with a wage increase retroactive

to the expiration date of the old contract. When no agreement was reached, plaintiffs and other Naum employees voted to strike and commenced picketing Naum in September, 1984. Naum subsequently hired permanent replacements for plaintiffs and other striking Naum employees.

Given the facts of this case, it is clear that no cognizable fair representation claim exists against Teamsters Local 317. That Local 317 was unable to successfully negotiate all that plaintiffs desired is not a breach of the duty of fair representation. That Local 317 was not successful in convincing Naum to drop its proposed incentive plan is not a breach of the duty of fair representation. And, that Naum adamantly refused to provide a wage increase retroactive to April 1, 1984, is not related to any alleged breach of the duty of fair representation. In sum, the allegations of the complaint quite simply fail to state a claim for breach of the duty of fair representation.

It is submitted, therefore, that because the complaint fails to state a claim for breach of the duty of fair representation, plaintiffs' claims are without merit. The Court of Appeals affirmance of the order of dismissal, therefore, was correct.

B. Dismissal Was Required As A Matter Of Law Because Of Plaintiffs' Failure To Exhaust Internal Union Remedies.

Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act requires the exhaustion of internal union remedies before resorting to the courts. That section provides, in relevant part, that:

> No labor organization shall limit the right of any member thereof to institute an action in any court . . . *provided that any such member may be required to exhaust reasonable hearing procedures* (but not to exceed a four-month lapse of time) *within such organization, before instituting legal . . . proceedings against such organization* or any officer thereof . . . .

Article XIX, Section 12(a) of the Teamsters International Union's Constitution specifically requires members to exhaust internal remedies prior to commencing any court action. Section 12(a) provides that:

> Every member, officer, elected business agent, Local Union, Joint Council or other subordinate body against whom charges have been preferred and disciplinary action taken as a result thereof, or against whom adverse rulings or decisions have been rendered or who claims to be aggrieved, shall be obliged to exhaust all remedies provided for in this Constitution and by the International Union before resorting to any court, tribunal or agency against the International Union, any subordinate body or any officer or employee thereof.

Article XIX, Section 12(c) states that:

> (c) The appeals procedure provided herein is also available to and must be followed by any member, or former member, who is aggrieved by any decision, ruling, opinion or action of the Local Union, membership, officers, or Executive Board, *including collective bargaining matters.* In the case of collective bargaining matters, there shall be no appeal from decisions of the Joint Council [emphasis supplied].

The federal courts have consistently recognized that the exhaustion requirements in union constitutions are not simply available alternatives which may be disregarded with impunity. Rather, such requirements are manda-

tory in nature and must be satisfied prior to the pursuit of other remedies. Thus, in *Martin v. Kansas City So. Ry.*, 197 F. Supp. 188 (W.D. La. 1961), the court observed that:

> It is elementary that provisions of a union's constitution and by laws are binding upon union members to the extent that such provisions are reasonable and fair. *International Association of Machinists v. Gonzales,* 356 U.S. 617, 78 S. Ct. 923, 2 L.Ed.2d 1018. *Fingar v. Seaboard Airline R. Co., supra,* [277 F.2d 698, 46 LRRM 2042 (5th Cir. 1960)].

Id. at 191.

The court held, therefore, that since plaintiff had failed to follow the procedures of the union constitution, the complaint had to be dismissed. The court said:

> The procedure for adjusting a grievance, as provided for in the Brotherhood Constitution and Protective Laws, was not followed by plaintiff and, therefore, on authority of the Fingar, Gainey, Girard Lodge, Fagan and Dalton cases, *supra,* we must hold that plaintiff is precluded from bringing this action against the Brotherhood and that such action is premature.

Id. at 193.

In the instant case, although alleging various violations of the International Union's Constitution and complaining of Business Agent DelGuidice's purported actions in collective bargaining matters, it is undisputed that plaintiffs failed to pursue or exhaust their internal remedies as required by the Constitution. Thus, plaintiffs did not afford the Union the opportunity to correct any of its alleged "own wrongs". Allowing unions the opportunity to take corrective action is one of the underlying purposes of the exhaustion requirement. In *Detroy v. Guild of Variety*

Artists, 286 F.2d 75 (2d Cir), *cert. denied,* 366 U.S. 929 (1961), the court explained that:

> The Congressionally approved policy of first permitting unions to correct their own wrongs is rooted in the desire to stimulate labor organizations to take the initiative and independently to establish honest and democratic procedures. *See* Cox, *The Role of Law in Preserving Union Democracy,* 72 Harv. L. Rev. 608, 615 (1959). Other policies, as well, underlie the exhaustion rule. *The possibility that corrective action within the union will render a member's complaint moot suggests that, in the interest of conserving judicial resources, no court step in before the union is given its opportunity.* Moreover, courts may find valuable the assistance provided by prior consideration of the issues by appellate union tribunals. *See,* Summers, *The Law of Union Discipline: What the Courts Do In Fact,* 70 Yale L.J. 175, 207 (1960).

Id. at 78 [emphasis supplied].

The court in *Petroff v. Teamsters Local 614,* 96 LRRM 3410 (E.D. Mich. 1977) addressed a factual setting parallel to the case at bar. In *Petroff,* union members challenged the validity of a meeting at which a ratification vote was taken concerning a collective bargaining agreement. The plaintiffs alleged that the meeting was improperly held because it failed to comply with various procedural requirements of the union by-laws.

In granting the union's motion for summary judgment, the court found that plaintiffs' failure to exhaust internal remedies was an absolute bar to maintaining a court action. The court held that:

> It is well settled that exhaustion of internal remedies is required in cases arising under Section 301 of the Labor Management Relations Act. *e.g., Bsharah v. Eltra Corp.,* 394 F.2d 502, 68 LRRM 2255 (6th Cir.

> 1968). *See Vaca v. Sipes,* 386 U.S. 171, 64 LRRM 2369 (1967). Nothing is apparent in this record to suggest that plaintiffs' internal remedies are illusory or fruitless. No history of rejection of complaints like those advanced by plaintiffs here has been shown. This Court concludes that the plaintiffs are barred from maintaining this action because of their failure to exhaust their available non-judicial remedies.

96 LRRM at 3412.

The exhaustion provisions considered in *Petroff,* as contained in the International Brotherhood of Teamsters' Constitution, are precisely the same as those applicable in the instant case. As in *Petroff,* plaintiffs have admittedly not exhausted their remedies under the Constitution. Moreover, plaintiffs have not alleged or demonstrated that exhaustion would have been futile or unable to afford them adequate relief. Indeed, plaintiffs have proffered no excuse whatsoever for their failure to exhaust.

Since it is undisputed that plaintiffs failed to exhaust their internal union remedies as required by the International Union's Constitution, Local 317 was entitled to judgment as a matter of law. The decisions of the courts below, therefore, were proper.

C. Plaintiffs' Claims Are Barred By The Statute Of Limitations.

The statute of limitations applicable to a hybrid Section 301/duty of fair representation action is the six-month limitations period contained at Section 10(b) of the National Labor Relations Act. Because this action was initiated more than six months after the Union's alleged wrongdoing, it is untimely and barred by the statute of limitations.

In *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983), this Court applied the six-month statute of limitations to hybrid actions claiming a breach of the duty of fair representation by a union and breach of the collective bargaining agreement by the employer. Finding that the NLRA's six-month limitations period was appropriate, the Court held that:

> In § 10(b) of the NLRA, Congress established a limitations period attuned to what it viewed as the proper balance between the national interests in stable bargaining relationships and finality of private settlements, and an employee's interest in setting aside what he views as an unjust settlement under the collective bargaining system. That is precisely the balance at issue in this case. . . . *Accordingly, "[t]he need for uniformity among procedures followed for similar claims, as well as the clear congressional indication of the proper balance between the interests at stake, counsels the adoption of § 10(b) of the NLRA as the appropriate limitations period for lawsuits such as this."*

Id. at 171 (quoting *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56 (1981) (Stewart, J., concurring) (citations omitted)) [emphasis supplied].

In the instant case, the complaint was filed on March 29, 1985. Accordingly, any claims for alleged wrongdoing by either Naum or Local 317 prior to September 29, 1984 are time-barred. The gravamen of plaintiffs' alleged claims in this action preceded that date. Naum's insistence upon instituting the "incentive plan" and proposed limitation on retroactivity of the wage increase had occurred prior to September 29. Additionally, the allegedly improper strike vote also occurred outside the limitations period. Indeed, plaintiffs had already commenced strik-

ing and been replaced by Naum prior to September 29, 1985.

Since the claims against Local 317 are barred by the statute of limitations, plaintiffs obviously cannot demonstrate a meritorious action. The dismissal of this action, therefore, was proper.

POINT II

THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION IN DISMISSING THE ACTION FOR LACK OF PROSECUTION

The district courts possess inherent authority to dismiss actions for failure to prosecute. In the instant case, based upon the entire record, the district court found that plaintiffs had failed to prosecute with due diligence and, therefore, dismissed the action. Since the district court's dismissal is amply supported by the record and was not an abuse of discretion, the lower court's decision must be affirmed.

In *Link v. Wabash Railroad Co.*, 370 U.S. 626, 629 (1962), this Court noted that "[t]he authority of a federal trial court to dismiss a plaintiff's action with prejudice cannot seriously be doubted." The Court, finding that the district courts are vested with inherent power to dismiss *sua sponte* in the face of inaction or delay, explained that:

> Neither the permissive language of the Rule[41(b)]—which merely authorizes a motion by the defendant—nor its policy requires us to conclude that it was the purpose of the Rule to abrogate the power of courts, acting on their own initiative, to clear their calendars of cases that have remained dormant because of the inaction or dilatoriness of the parties seeking relief.

> The authority of a court to dismiss *sua sponte* for lack of prosecution has generally been considered an "inherent power", governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.

Id. at 630-31.[6]

In the present case, plaintiffs' failure to prosecute does not involve an isolated instance of inadvertence or excusable neglect. Rather, throughout this litigation, plaintiffs repeatedly failed to adhere to the rules and procedures of the district court. Accordingly, plaintiffs' motion to vacate the Order of Dismissal was properly denied.

Rule 11 of the General Rules of the Northern District provides that:

> Civil causes in which no action has been taken for more than one year may be called for review upon not less than fifteen (15) days' notice by mail addressed to the attorneys of record, or to the parties if appearing pro se. The Court may thereupon enter an order dismissing the cause for want of prosecution, or continuing it, or may make such other order as justice may require.

In the instant case, plaintiffs had taken no action in this case for more than one year prior to the Dismissal Calendar Call on September 26, 1986.

Moreover, the only reason proffered by plaintiffs for their failure to appear at the dismissal calendar call on

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[6] The Court in *Link* also observed that the absence of notice or failure to hold a hearing did not render the dismissal void; adequacy of notice and a hearing turn on a party's knowledge of the consequences of his own conduct. *Id.* at 632. The Court concluded that a district court may dismiss under Rule 41(b) when the circumstances warrant such action, without affording either notice or a hearing before it acts. *Id.* at 633.

September 26 was their purported failure to receive the September 8, 1986 notice from the Clerk's Office. The purported lack of notice, however, is directly attributable to the failure of plaintiffs' attorneys to advise the district court of their change in address.[7]

The complaint in this action sets forth a post office box in Baldwinsville, New York as the office address for both Barbara N. Sims, Esq. and Scott D. Rodman, Esq. The office of the Union's attorneys was never advised that Mr. Rodman had changed his address and moved to Buffalo, or that mail should be forwarded to an address other than that listed on the complaint.

Furthermore, Rule 3 of the Rules of the Northern District specifically requires that all attorneys of record maintain an office for the transaction of business within the district, or that local counsel be designated upon whom service of papers shall be made. In the present case, no designation of local counsel was made by plaintiffs' attorney when he moved his offices to Buffalo in April, 1986.

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[7] The federal courts have repeatedly denied relief from error resulting from mere carelessness. *See Williams v. Five Platters, Inc.*, 510 F.2d 963 (3rd Cir. 1975) (failure of counsel to respond to summary judgment motion due to his absence from office, pressure from other work, omission of matter from his docket, and inability to contact his client, amounted to carelessness and inexcusable neglect); *Greenspun v. Bogan*, 492 F.2d 375 (1st Cir. 1974) (party contesting a settlement in shareholder's derivative suit had inexcusably failed to appear at the settlement hearing). Furthermore, relief under Rule 60(b) has also been denied on the general allegation that the defaulting attorneys were engaged in other business and/or was outside the jurisdiction of the court. *See Schwartz v. United States*, 384 F.2d 833 (2d Cir. 1967) (no abuse of discretion in denial of Rule 60(b) motion where attorney, who was preoccupied with other cases, inexcusably neglected plaintiff's case); *See also Smith v. Stone*, 308 F.2d 15 (9th Cir. 1962).

Rather, Mr. Rodman apparently relied upon the Post Office to forward all mail sent to the Baldwinsville address. Additionally, plaintiffs' attorneys had previously failed to personally appear at a status conference before the district court on July 26, 1985. An individual named William Reidle, a non-lawyer who was not familiar with the case, ostensibly appeared on behalf of plaintiffs' attorneys.

Thus, plaintiffs' attorneys' failure to appear at the dismissal calendar call on September 26, 1986 was not an isolated example of inadvertence or neglect. Rather, it was the crowning event in a course of conduct that has characterized this litigation. Plaintiffs' attorneys had failed to respond to discovery requests, failed to comply with court-ordered disclosure, ~~failed to~~ respond to correspondence from defendants' attorneys, and failed to appear at scheduled conferences before the district court. In short, plaintiffs' attorneys repeatedly failed to follow the established procedures of the district court.

Since any purported lack of notice of the Dismissal Calendar Call on September 26, 1986 was the direct result of plaintiffs' attorneys' failure to provide notification of their change of address or to properly designate local counsel for service of papers within the district, the district court's dismissal of the action for lack of prosecution and denial of plaintiffs' motion under Rule 60(b) was proper. The decision of the lower courts, therefore, should not be disturbed.

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CONCLUSION

For all of the foregoing reasons and authorities, the Court of Appeals correctly concluded that the district court's judgment, which denied plaintiffs' application to vacate dismissal, was supported by the record and, accordingly, enforced that judgment. The petition for writ of certiorari, therefore, should be denied.

Respectfully submitted,

BLITMAN AND KING

Attorneys for Respondent
Teamsters Local Union No. 317
Office and Post Office Address
The 500 Building, Suite 1100
500 South Salina Street
Syracuse, New York 13202
Telephone: (315) 422-7111

Of Counsel:

JULES L. SMITH, ESQ.
(Counsel of Record)
DONALD D. OLIVER, ESQ.

APPENDIX

STATUTORY PROVISIONS AND RULES INVOLVED

Section 101(a)(4) of the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 411(a)(4), provides that:

> No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further,* That no interested employer, or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

Rule 3 of the General Rules of the United States District Court for the Northern District of New York provides that:

> Only members in good standing of the bar of this Court may appear as attorneys of record. Any attorney, solicitor, or proctor of this court, not having an office for the transaction of business in person within this district, when appearing of record in any cause shall specify an attorney of this court maintaining an office in the Northern District of New York for the regular practice of law in person, upon whom service of papers shall be made. Where a party appears in person he shall file with the complaint or other pleading a state-

ment of an address within the district where papers may be served.

Rule 11 of the General Rules of the United States District Court for the Northern District of New York provides that:

> Civil causes in which no action has been taken for more than one year may be called for review upon not less than fifteen (15) days' notice by mail addressed to the attorneys of record, or to the parties if appearing pro se. The Court may thereupon enter an order dismissing the cause for want of prosecution, or continuing it, or may make such other order as justice may require.